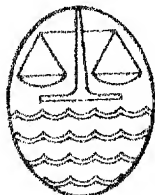




UNITED NATIONS



THIRD CONFERENCE
ON THE LAW OF THE SEA

PROVISIONAL

For participants only

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30 July 1974

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Second Session

SECOND COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE SIXTEENTH MEETING

Held at the Parque Central, Caracas,
on Friday, 26 July 1974, at 11.35 a.m.

Chairman:

Mr. AGUILAR

Venezuela

later:

Mr. PISK

Czechoslovakia

Rapporteur:

Mr. NANDAN

Fiji

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CONTINENTAL SHELF (Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 21) (A/9021); A/CONF.62/C.2/L.17)

Mr. TUERK (Austria) said that the results of the Committee's work had so far not been as great as might have been expected or desired and he confirmed his delegation's readiness to do everything it could to help the Committee reach generally acceptable solutions.

The item before the Committee was of particular concern to his country. His delegation hoped that the new law of the sea would accommodate the legitimate interests of all States. That had not always been the case for certain groups of States, as could be seen from the legal norms concerning the continental shelf established at Geneva in 1958, which totally disregarded the legitimate interests of the land-locked countries. That was understandable considering that the proclamation of 28 September 1945, on which the Geneva text had been based to some extent, had emanated from a country which did not have to take into account the interests of any land-locked States in its geographical area. In view of the political situation existing at that time, any misgivings which some countries might have had concerning the principle enunciated in the proclamation had not been voiced. Other coastal States had followed the example set in the proclamation and their unilateral declarations had been given legal sanction by the 1958 Geneva Convention. He noted that of the 86 States participating in the 1958 Conference only 10 were land-locked, while of the 149 States invited to the present Conference 29 were land-locked. His country, like almost two thirds of the States participating in the present Conference, had not become a party to the Geneva Convention on the Continental Shelf.

The continental shelf had been defined as the zone around the continent extending from the low-water line to the depth where there was usually a marked increase of declivity to greater depth. Geophysical research had shown that the continental margin was an extension of the same nature as the continent itself. It could therefore be said that the continental margin was a submerged area of the continent and not just of its coastal fringes. The assertion that the continental shelf might be regarded as an extension of the land mass of the coastal nation and thus naturally appurtenant to it seemed correct only in cases where the coastal State was one of continental dimensions with no land-locked countries in its vicinity. The right to explore and exploit the natural resources of the continental shelf should not therefore be reserved for coastal

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States but should be accorded on an equitable basis to land-locked States in their respective geographical regions. Greater account should also be taken of the legitimate interests of other geographically disadvantaged States.

With regard to the delimitation of the continental shelf, he noted that in 1956 the International Law Commission had added the exploitability criterion to the depth criterion and that both criteria had been included in the 1958 Geneva Convention. His country could not accept reconfirmation of the exploitability criterion in the new Convention because it implicitly contradicted the Declaration of Principles by voiding the area, the resources of which were the common heritage of mankind, of much of its substance. His delegation had stated in the general debate that it was essential for the Conference to create an economically meaningful international area; the only way to do justice to the concept of the common heritage of mankind would be to set up an international area with enough significant resources left to be shared among all States in the near future. Accordingly, his country preferred a distance criterion not exceeding 200 miles, for the inequity of the depth criterion had been an important reason why a number of States had extended their jurisdiction into the high seas.

If the Conference should reach agreement on the establishment of an economic zone, his delegation would see no need to retain the concept of the continental shelf, since the legal content of the term "continental shelf" should be absorbed by the new legal notion of "economic zone". Such a development would clarify the legal framework of matters relating to the sea-bed.

Mr. Pisk (Czechoslovakia) took the Chair.

Mr. ZELAYA (Nicaragua) said that the question of the continental shelf required frank examination and could be approached from two points of view. Firstly, the 1958 Geneva Convention had created a legal fiction by dividing the submarine part of a territory into two parts, one situated below the territorial sea, the other situated beyond an undefined territorial sea where the coastal State would exercise sovereign rights with regard to the exploration and exploitation of natural resources. That legal fiction had prevented some countries, including his own, from acceding to the Convention. Secondly, when the various proposals concerning the continental shelf submitted to the Sea-Bed Committee were considered in the context of the notions of territorial sea,

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(Mr. Zelaya Nicaragua)

patrimonial sea and economic zone, it could be seen that the legal fiction had been retained: some ideas had been added which obscured the concept of the continental shelf, while others were open to interpretations which would extend the limits imposed on the coastal State with regard to its submerged territory to such a degree as to be tantamount to acceptance of a further partition of its territory and sovereign powers.

His delegation thought that all those ambiguous concepts should be made clear; the new law of the sea should have a rational foundation which would make it intelligible. The present concept of the continental shelf was similar to an assertion that a person's foot was part of his body if he was barefoot, whereas when shod, his foot was not part of his body but belonged to the shoe.

His country's laws maintained that the continental shelf was a part of its national territory. In view of the recognized special nature of the submerged area of the territory of Central America in the Caribbean, the listing of the characteristics of that area would show that his country's legal tradition of territoriality for the shelf dated from the distant past. Everything that was essential for the territorial integrity and physical, economic and institutional security of a country must be under its jurisdiction and control. That fundamental right was limited only by the equal right of another State. His country could easily demonstrate that its continental shelf in both oceans within 200 miles from its coasts met that criterion fully. History had demonstrated the strategic value of some of the characteristics of his country's continental shelf. Moreover, everyone was aware that its emergent territory did not extend very far and had few resources; thus his country needed the resources of its continental shelf for its development, which was being fully integrated in the life of the country. It needed to complete that integration by establishing a régime which would guarantee rather than weaken it.

Some of the proposals concerning the continental shelf, the patrimonial sea and economic zone gave rise to deep concern. Either the economic zone would be limited to the water column situated between the outer limit of the territorial sea of 12 miles and the outer limit of 200 miles, or the concept of the continental shelf established in 1958 would be further weakened. His delegation preferred the former alternative.

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(Mr. Zelaya, Nicaragua)

It was inconceivable that the economic zone or patrimonial sea might be interpreted as including areas of the sea-bed which formed part of a country's continental shelf. That would make the problem more complicated and unless the ambiguity was removed, there would be many reservations. Unless the Committee established that the economic zone or patrimonial sea had a national character, it would be creating yet another legal fiction. Some of the proposals would have serious economic effects and must be limited to certain resources and to a part of the water column of the economic zone. Other proposals, such as that of historic use, divested the concepts of the economic zone and patrimonial sea of the developmental instrumentalism which they should have. The granting to international bodies of powers of jurisdiction and inspection over the national economic zone was only acceptable in a very limited area and possibly should not go beyond advisory functions. With regard to the question of compensatory measures in favour of the land-locked and other geographically disadvantaged States, his delegation thought that geographical proximity could not be the sole criterion, and it would not be fair to compel States with few resources to share them with others, while the rich countries enjoyed abundance.

Failure to reach agreement on certain basic aspects of the issues could impede the general work of the Conference. His delegation thought that some decisions were more basic than others and that it would help the work of all the Committees if they were dealt with separately in a partial and provisional consensus. Accordingly, his delegation had submitted a working document (A/CONF.62/C.2/L.17). It requested that at least the first four paragraphs should be incorporated in the informal working paper on the continental shelf to be prepared by the officers of the Committee, but stressed that all the proposals formed an integral whole.

His delegation had tried to set out a series of basic points leading towards a global agreement or the basic political framework for universal solutions. An essential concept was that joined to the traditional national territory there should be a national zone made up of three separate elements; in it the coastal State would have the right to exercise separate jurisdictions to safeguard its own interests and the legitimate interests of the international community; the coastal State would be the

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(Mr. Zelaya, Nicaragua)

guarantor of the international community which, in its turn, would guarantee to the coastal State the inviolability and integrity of the national zone; finally, the working document dealt with the question of rights and duties in the national zone, including the questions of straits and land-locked and geographically disadvantaged States.

Mr. CHOWDHURY (Bangladesh) said that there were three issues before the Committee: the legal basis of the rights of coastal States over the continental shelf; the definition of the continental shelf; the relation of the continental shelf to the economic zone. In 1969 the International Court of Justice had held that the continental shelf was the natural prolongation of a State's territory and that the rights of the coastal State with regard to that area existed ipso facto and ab initio by virtue of its sovereignty over the land. Although those rights were embodied in the 1958 Geneva Convention, they existed independently of the Convention by virtue of their foundation in customary law. The International Court had in effect underscored the importance of the geological factor, which must be taken into account in any definition of the continental shelf.

The definition of the continental shelf in article 1 of the 1958 Convention lacked precision. The criterion of exploitability was open to various interpretations; by stressing the geological and the geographical factors, the International Court had not supported that criterion. The definition must be made more precise; the legal notion of the continental shelf must be different from the geological notion. In his delegation's view, the definition should be expressed in terms of depth, and the continental shelf should include the continental slope and rise. That view was supported by the judgement of the International Court that the coastal State's jurisdiction over submerged areas extended not only over the continental shelf but also over the slope and rise, on the grounds that they were a natural prolongation of the coastal State's territory.

The Conference could not refashion nature. Some coastal States had a better continental margin than others. The need was to agree on a more practical, rational, just and equitable definition of the continental shelf.

His delegation thought that the régime for the continental shelf should be considered together with that for the economic zone, for it would depend on the nature and characteristics of the economic zone, including the rights and jurisdictions of coastal States with regard to all the natural resources thereof. /...

Mr. ORION (Israel) said that the doctrine of the continental shelf was firmly established in modern international law and that nothing affected the legal status of the superjacent waters as high seas or of the air space above those waters. The freedom of the seas must be preserved and any interference with freedom of navigation and overflight must be kept to the absolute minimum.

Underlying the Truman Proclamation of 1945 was the consideration that the continental shelf was regarded as a single morphological unit joined with the continental area of a given State; hence the coastal State enjoyed sovereign rights over it. Technological advances since the 1958 Conference required a re-examination of the law and new agreements with a view to preventing conflicts. His delegation, which agreed that the rules for the delimitation of the outer limit of the continental shelf should be revised, believed that the criteria of depth and exploitability were now outdated. Israel, a country with a narrow shelf and a short coastline, was unable to support any criterion based on depth as the seaward limit of the continental shelf and it preferred a fixed distance from the shore as an alternative to exploitability.

It was advisable to permit each coastal State to define the outer limit of its continental shelf up to an agreed maximum measured from the baselines in order to help the disadvantaged coastal States to exploit the sea-bed within the area designated for the continental shelf. In a semi-closed sea like the Mediterranean, the problem of delimiting the continental shelf for coastal States, whether adjacent or opposite to each other, was that their shelves were likely to overlap. Those States should, therefore, respect each other's sovereignty and conduct necessary consultations in order to arrive at a reasonable agreement on the boundary of the coastal sea-bed area of each State, particularly in accordance with the principle of equity as stated by the International Court of Justice in 1969 with respect to the continental shelf of the North Sea.

Since the proposed economic zone of 200 miles would cover the continental shelf, there was some question whether to deal with the issue at all. His delegation believed that the two items should be dealt with separately for the time being, because the economic zone concept was still being formulated and its full development would require time and experience, while the continental shelf was an established institution. With

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(Mr. Orion, Israel)

regard to the sea-bed and non-living resources, his delegation was still studying whether exclusive zones would be a practical proposition in Israel's part of the Mediterranean Sea; however, it did not wish to prejudice decisions with respect to the wide oceans where wide allocations were feasible.

It was generally recognized that only the developed States today possessed the financial and technological competence for the exploitation of the submarine resources of the oceans. Accordingly, his delegation would suggest that the United Nations Development Programme should develop programmes to assist developing countries to benefit from the resources of the deep sea adjacent to their continental shelf by providing research and technical facilities. His delegation understood that that zone was being limited to the non-living resources of the sea-bed and subsoil underlying a belt of sea up to a reasonable distance seaward of the outer limit of the continental shelf. That would not affect the character, as high seas, of the superjacent sea, nor the status of the air space above it.

He wished to recall that his delegation had not taken part in the work of the Sea-Bed Committee and, since it was speaking on the item for the first time, it reserved the right to speak again, particularly on new proposals introduced at the Conference.

Mr. HERRERA (Honduras) said that in 1958, the Honduran Government had issued its first declaration on its rights over the continental shelf and the waters which covered it in both oceans. Honduras considered that it had jurisdiction over the riches or resources both in the soil and subsoil and in the superjacent waters and, accordingly, had the right to establish demarcation zones for the protection of those resources. His delegation could not consider the right of the State over the resources in its submarine areas separately from the rights of the State over the biological resources in the water column, since both were closely related.

In Honduran legislation, the concept of the continental shelf was similar to that stipulated in the Geneva Convention on the Continental Shelf. However, Honduras was not a party to that Convention and, consequently, its right over the resources of that area was in no way limited by the Convention with respect to its use of the term "natural resources", since Honduras had stated its sovereign rights over the totality of those resources.

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(Mr. Herrera, Honduras)

The continental shelf of Honduras was determined both by depth and exploitability. His country was prepared, however, to negotiate a precise limit for that shelf to be fixed taking into account the fact that the shelf was a natural prolongation of the country's territory up to the limit of the ocean basin or abyssal depth. The limit might be established without prejudice to the retention by States with narrow shelves of sovereign rights over a submarine area of 200 nautical miles, supplementing their sovereign rights over the superjacent waters under the terms of the patrimonial sea, economic zone, or whatever else might be established in the future Convention.

With respect to the delimitation of the continental shelf, as stated by the International Court of Justice in the case of the North Sea continental shelf, there was no obligatory rule in customary law. While an equidistance rule could be considered obligatory with respect to the delimitation of the territorial sea, it could not be applied to the shelf, which was a submerged land territory extending over an area considerably beyond the territorial sea. Consequently, if the rule of equidistance were applied, there would not only be significant differences produced by certain coastal configurations, but it would also run counter to the very nature of the soil and subsoil which was the extension of a State beneath the territorial sea and, consequently, should not obstruct the natural prolongation of the territory of another State.

His delegation believed that the criterion of equidistance could be retained as an optional criterion for the lateral delimitation of the continental shelf and that the only criterion which should be laid down in the draft treaty to be negotiated was the need for agreement. In the absence of such agreement, the delimitation should be determined through the peaceful means provided in Article 33 of the United Nations Charter.

His delegation's position was closely related to that which it would express in connexion with the exclusive economic zone beyond the territorial sea in which the coastal State had competence.

Mr. Aguilar (Venezuela) resumed the Chair.

Mr. UNIS (Libyan Arab Republic), citing the three criteria laid down by the 1958 Geneva Convention for the definition of the continental shelf, said that the theory based on the 200-metre isobath was inadequate and often inequitable since in

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(Mr. Unis, Libyan Arab Republic)

some countries that limit fell within the territorial waters and, in others, the sea was so shallow that the isobath was at a distance exceeding 200 miles. Furthermore, technological exploitation possibilities varied from day to day. Since the first two criteria of the 1958 Convention were inadequate and inequitable, that left only the standard distance, for example, 200 miles. That would give the same breadth of sea to the different coastal States and would lead to the concept of the economic zone, which had been approved by the Organization of African Unity. OAU had agreed that that zone, with a maximum breadth of 200 miles, should be under the sovereignty of the coastal States with respect to the exploration and exploitation of living and non-living resources.

In order to delineate the limits of area allocated to each of the adjacent or opposite States, any one of a combination of delimitation methods appropriate for arriving at an equitable subdivision of the economic zone might be applied, taking into consideration the historical and geographical conditions and special circumstances.

Mr. GODOY (Paraguay) said that his country had not acceded to the 1958 Convention which had recognized, as criteria for delimiting the continental shelf, distance and depth as far as was exploitable. In other words, that Convention had set an imprecise limit. The idea of a 200-mile economic zone meant that the rules governing the continental shelf were no longer in force since that area would be covered by the patrimonial or territorial sea.

Mr. ARIAS SCHREIBER (Peru) said that Peru had a very narrow continental shelf, which was one of the reasons why it had extended its sovereignty to a limit of 200 miles over both the adjacent sea and the soil and subsoil. Other Latin American countries had adopted that criterion because the geophysical and geological characteristics of their coasts were similar. For those countries, therefore, the concept of the continental shelf had no standing of its own, but fell within the legal régime of the national marine area. Peru's interests were therefore protected by the recognition that the coastal State's sovereignty extended to a maximum of 200 miles both on the sea and beneath it. In defence of those interests, his delegation would have to support that limit in all the areas to which it applied.

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(Mr. Arias Schreiber, Peru)

Peru's position on the law of the sea was based on respect for the sovereign rights of other States over their respective adjacent seas and over the submerged prolongations of their territories even if they exceeded 200 miles. No country had stronger claims than the coastal State over any part of its continental shelf since the shelf constituted a natural and indivisible part of its national territory.

His delegation wished to confirm that with respect to the precise limit of the coastal State's sovereignty, Peru supported the criterion of the lower outer edge of the continental shelf bordering the abyssal plain. In that case, as in others, regional solutions should be adopted in order to take into account the characteristics of each area of application. Failing that, the Conference would be making the mistake of attempting to impose arbitrary limits which would be against nature and unacceptable to the respective countries.

Finally, with respect to the content and scope of the rights to be exercised over the continental shelf, his delegation agreed generally with the provisions of the draft submitted by the delegation of Argentina.

Mr. LIMPO SERRA (Portugal) said that Portugal was a country largely open to the sea and had always depended on it since it was a country of navigators and fishermen.

The law of the sea which had governed maritime relations over past centuries had been based on a certain balance of interests and that balance had permitted a long period of stability. It had been upset on the one hand, because of the discovery of vast riches in the sea-bed and the possibility of their exploitation, and on the other, because the theory that the resources of the sea were inexhaustible had been discredited as a result of the depletion of several species of fish by modern fishing fleets. That depletion had aroused alarm among States dependent on fishing for their development and their very existence. The first reason had given rise to the concept of the continental shelf and the second had generated the idea of the economic zone.

Those two ideas were an expression of the same principle, namely, that man was indisputably linked to the sea which was situated adjacent to his land and over which he had rights. The discovery of that principle had become clearer in the Santiago Declaration and also in the Truman Proclamation.

The right of States over the continental shelf was no longer in doubt. Apart

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(Mr. Limpo Serra, Portugal)

from the paramount right of countries to the natural resources of the maritime zone adjacent to their coasts, their right to the continental shelf was based on and justified by reasons of geological continuity. Indeed, the continental shelf was, from a geological point of view, the prolongation of the coast.

His delegation believed that the sovereign rights of exploitation established by the 1958 Geneva Convention justified granting the coastal States the exclusive right of exploration of the continental shelf and of establishing rules for the protection and conservation of its resources. As the Geneva Convention had established, the rights of the coastal State over the continental shelf should not prejudice the legal régime of the superjacent waters, taking into account, nevertheless, the unitary nature of the economic zone.

The main problem with respect to the continental shelf was that of fixing its outer limit. In view of the natural circumstances on which that concept was based, his delegation believed that the outer limit of the shelf should be fixed at the lower edge of the continental margin contiguous to the abyssal plain. However, his delegation would not encourage the adoption of geological or morphological criteria; their inaccuracy made it necessary to replace them by numerical equivalents for practical purposes. His delegation therefore believed that the lower edge of the continental margin should be identified at the 4,000-metre isobath. Due regard should, however, be given to the fact that the unitary nature of the economic zone could extend the rights of the coastal State beyond that limit.

The ideas just expressed by his delegation were neither exhaustive nor final and it wished to reserve its position on the matter.

The meeting rose at 12.50 p.m.